

MARTHA BOERSCH (CABN 126569)  
Chief, Criminal Division

RAVI T. NARAYAN (CABN 331858)  
Deputy Chief, Criminal Division

MARJA-LIISA OVERBECK (CABN 261707)  
LEIF DAUTCH (CABN 283975)  
ASEEM PADUKONE (CABN 298812)  
Assistant United States Attorneys

450 Golden Gate Avenue, Box 36055  
San Francisco, California 94102-3495  
Telephone: (415) 436-7200  
FAX: (415) 436-7234  
mari.overbeck@usdoj.gov  
leif.dautch@usdoj.gov  
aseem.padukone@usdoj.gov

Attorneys for United States of America

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND DIVISION

UNITED STATES OF AMERICA,	)	<b>CASE NO. 21-CR-328 YGR</b>
	)	
Plaintiff,	)	<b>GOVERNMENT’S RESPONSE TO JUAN</b>
	)	<b>SOTO’S NOTICE OF OBJECTION TO</b>
v.	)	<b>COURT’S ORDER (DOC. 1685) [ECF NO. 1692]</b>
	)	
DAVID CERVANTES, JAMES PEREZ,	)	
GUILLERMO SOLORIO, and GEORGE	)	
FRANCO,	)	
	)	
Defendants.	)	
	)	

On November 19, 2024, Juan Soto filed an objection to this Court’s order authorizing the government to produce sealed filings from his case to the *Cervantes* trial group pursuant to the parties’ Supplemental Attorneys’-Eyes-Only Protective Order. ECF No. 1692. While the government understands counsel’s obligation to promote the interests of his client, the government files this response to clarify the record in three regards.

1 First, Soto asserts that “No list of pleadings or exhibits sought to be released was provided to, or  
2 discussed, with undersigned counsel.” ECF No. 1692 at 2. Not so. As evidenced by the email thread in  
3 Exhibit A to this filing, after the *Cervantes* trial group emailed 9 discovery requests to the government  
4 on November 8, 2024, undersigned counsel contacted Soto’s counsel, informed him of the defense’s  
5 request for an Attorneys’-Eyes-Only production of sealed Soto filings and exhibits, and solicited his  
6 input in advance of the scheduled status hearing before this Court. Ex. A at 2. In a subsequent email to  
7 Soto’s counsel the same day, and before the phone call referenced below, undersigned counsel  
8 specifically identified the 18 sealed filings—by both docket number and title of filing—that it believed  
9 could be responsive to the defense’s requests. Ex. A at 1. These are precisely the same filings that the  
10 government identified at the November 14, 2024 hearing for the defense and the Court and which were  
11 included in the parties’ stipulation and proposed order. Thus, Soto’s counsel’s claim that he was  
12 provided no advance notice of the filings at issue is not supported by the record.

13 Second, following this exchange of emails on November 12, 2024, Soto’s counsel and  
14 undersigned counsel had a 14-minute phone call the same day. Soto’s counsel explained, as he does in  
15 his objection, that he was in New York on another matter and would likely not be able to attend the  
16 November 14, 2024 status hearing. Soto’s counsel expressed both general concerns about his client’s  
17 safety, as well as specific concerns about exhibits attached to the filings at issue (such as declarations  
18 from Juan Soto and a relative) that were prepared as part of the defense investigation, and thus arguably  
19 were work product. Given that Soto’s counsel would likely be unable to attend the November 14, 2024  
20 hearing, undersigned counsel offered to convey Soto’s counsel’s concerns to the Court, even repeating  
21 his understanding of those concerns at the end of the call and confirming that they accurately  
22 summarized Soto’s position. Soto’s counsel stated that it was an accurate summary. Those are the very  
23 same concerns that undersigned counsel summarized for the Court at the November 14, 2024 hearing:  
24 the general safety and privacy concerns that have animated Soto’s attempts to shield his identity  
25 throughout these proceedings, and the specific concerns about defense-created exhibits like declarations  
26 that could constitute work product. Counsel for the *Cervantes* trial group responded to those expressed  
27 concerns, arguing that the sealed filings were relevant to their post-trial motions, and that any work  
28 product privilege was waived when the exhibits were filed with the Court. The Court then balanced the

1 trial group's interest in the sealed filings against Soto's safety interests and determined that an  
2 Attorneys' Eyes Only production of the filings and exhibits appropriately balanced those competing  
3 interests. When Soto's counsel asked for an update from the hearing, undersigned counsel responded,  
4 explaining the Court's consideration of the arguments made and attaching a copy of the draft stipulation,  
5 which had been sent to defense counsel but which was not filed until later that day. Ex. B at 1.

6 Finally, Soto asserts that the sealed filings "are being released to defense counsel for the  
7 Cervantes group on an AEO basis—which does not limit communication between counsel and client  
8 about the content of the documents and materials." ECF No. 1692 at 4. Not so. Per the Court's  
9 November 18, 2024 order, the sealed filings are being produced to defense counsel subject to the parties'  
10 Supplemental Attorneys'-Eyes-Only Protective Order, which states in two places that defense counsel  
11 may not share the documents or their contents/substance with their clients. First, the protective order  
12 states that covered materials "will be produced only to defense counsel (*not to the defendants*)."  
13 ECF No. 966 at 2, emphasis added. Second, the protective order also provides that "No other person shall be  
14 allowed to examine the ATTORNEYS-EYES-ONLY MATERIALS, and *the contents/substance of the*  
15 *ATTORNEYS-EYES-ONLY MATERIALS shall not be shared with anyone without further order of the*  
16 *Court.*" *Id.* at 4, emphasis added. Thus, defense counsel are prohibited from showing the sealed filings  
17 to their clients or sharing the contents or substance of the filings with their clients.<sup>1</sup>

18 In sum, the government has taken seriously the safety concerns expressed by the Soto team  
19 through these proceedings and through the present day. It has consistently attempted, in good faith, to  
20 respect those concerns while also complying with all applicable discovery obligations. At this stage of  
21 the proceedings, the government's analysis is informed by the fact that much of the information the Soto  
22 team has sought to shield from public view was the subject of the defense's trial presentation, with  
23 multiple witnesses discussing it in open court. Thus, at this stage, the government believes that the  
24 Court struck the appropriate balance by authorizing the government to produce AEO the sealed filings  
25 that the trial group has claimed could be relevant to their post-trial motions.

26  
27  
28 <sup>1</sup> Nor have the Soto filings been "unsealed." ECF No. 1692 at 8. They remain under seal on the  
docket and are not available to public. They have simply been produced AEO to the Cervantes trial  
group.

DATED: November 20, 2024

Respectfully submitted,

MARTHA BOERSCH  
Chief, Criminal Division

/s/  
LEIF DAUTCH  
Assistant United States Attorney